IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 827 OF 2005

1. Maruti Sahebrao Bhapkar.
2. Vijay Krishna Kumbhar.
3. Dominic Albert Lobo. ... Petitioners.

Versus.

1. Municipal Commissioner (Dilip Band)
Municipal Corporation of City of
Pimpri-Chinchwad, Pune.

2. Municipal Corporation of Pimpri-
Chinchwad, Pimpri, Pune.

3. Chairman, Standing Committee,
Municipal Corporation of Pimpri-
Chinchwad, pimpri, Pune.

4. M/s.Shreya Constructions
1137/1, Paragm Model Colony, Pune. ... Respondents.

Petitioner No.3-in-person.

Shri N.V.Walawalkar with Shri Ajay Suryawanshi for the
Respondents Nos.1 to 3.

Shri G.S.Godbole for the Respondetn No.4.

CORAM : ABHAY S. OKA, J.

DATED : 30th March, 2005.

P.C.:

1. Heard the Petitioner No.3 in person who argued the petition on behalf of himself and for other two Petitioners. The other two Petitioners were stated to be present when the petition was heard by me. Heard Shri Walawalkar for the Respondents Nos.1 to 3 and Shri Godbole for Respondent No.4.

2. The Petitioners are the Plaintiffs and the Respondents Nos.1 to 3 are the Defendants in a suit filed by the Petitioners being Regular Civil Suit No.109 of 2004 in the Court of the Civil Judge, Junior Division, (P.C.M.C.) Pune. The Petitioners/Plaintiffs have filed the above civil suit by invoking the provisions of section 91(1)(b) of the Code of Civil Procedure, 1908. In the said suit the challenge is to the Item No.56 on the agenda of the meeting dated 30th November 2004 of the Standing Committee of the Respondent No.2-Corporation. The prayer is that the decision taken on 30th November 2004 be declared as null and void and illegal.

3. In the said suit an application for temporary injunction was made by the Petitioners which was allowed by the trial Court. In an appeal preferred by the Respondents Nos.1 to 3, the order of temporary injunction granted by the trial Court was set aside by the Appellate Court. This petition is filed under Article 227 of the Constitution of India challenging the Judgment and order of the Appellate Court.

4. The case of the Petitioners is that they are tax payers residing within the jurisdiction of the Respondent No.2-Corporation. In meeting dated 30th November 2004 of the Standing Committee of the Respondent No.2-Corporation, item No.56 was a subject

regarding finalisation of contract for making a modern sitting arrangement and other connected work in Administrative wing on the 4th floor of the office of the Respondent No.2-Corporation by spending a sum of about Rs.39,54,040/-. The contention of the Petitioners is that in the name of the renovation of administrative wing of the office of the Respondent No.2-Corporation, the Respondent No.1 who is the Municipal Commissioner is trying to get his office renovated. The contention raised by the Petitioners in the plaint is that the available budgetary sanction is only to the extent of Rs.50 lakhs and if two other Resolutions passed by the concerned Committee are considered it is obvious that the total cost of the project covered by the three Resolutions will be Rs.91 lakhs. A further submission is made in the plaint that the work which is going on in the office of the Respondent No.1 is illegal. A contention is raised that the public money is being wasted and in the name of renovation of the administrative wing, the Respondent No.1 is trying to get his office renovated.

5. An Application for injunction was made by the Petitioners praying for interim injunction and limited injunction was granted by the trial Court restraining the Respondents Nos.1 to 3 from implementing the proposal of demolition and renovation of the office of the Respondent No.1 till final hearing of the suit. It

is pertinent to note that in the application at Exh.5 the following prayer was made:

> (A) This Hon'ble Court be pleased to pass ad-interim injunction staying the consideration of agenda item No.56 of defendant No.3 at its Meeting on 21.12.2004 or at any other meeting thereafter till the disposal of the suit. It is further prayed that till the stay, ad-interim injunction and disposal of this suit, all defendants be directed to stop the implementation of the proposal to demolish and renovate office of defendant No.1.

The item No.56 was considered and was passed in the meeting of the Standing Committee. Thus it is very clear that during the pendency of the suit what was sought to be prayed for was a preventive injunction restraining the Respondents Nos.1 to 3 from renovating the office of the Municipal Commissioner. It is pertinent to note that this was a limited relief granted by the trial Court. There was no appeal preferred by the original Plaintiffs against the said order.

6. In this petition various issues have been urged by the Petitioner No.3 appearing in person. The said

issues are relating to the scope of the Resolution passed by the Standing Committee. The other issue which is raised is whether there was budgetary grant available for undertaking renovation of the administrative wing. These are the wider issues which will have to be considered at the time of disposal of the suit. Today the limited question which is to be considered is whether the work which is undertaken in the office of the Respondent No.1-Commissioner is to be stopped till disposal of the suit.

7. A reply was filed by the Respondents Nos.1 to 3 to the Application for temporary injunction. In the said reply it is contended that the furniture in the office of the Respondent No.1-Commissioner was made in the year 1985 and considering the expansion of the City and large increase in the number of visitors, it was necessary to rearrange the office of the Respondent No.1. Written Statement and additional Written Statement was also filed by the Respondents Nos.1 to 3. In the additional Written Statement it was sought to be contended that the Respondent No.1-Commissioner being the administrative head is in-charge of the whole administrative department of the Respondent No.1-Coproration. It is stated that on the 4th floor of the building of the Respondent No.1-Corporation, the administrative department is situated and in the said administrative department or wing, the Respondent No.1-Commissioner and the

Additional Commissioner are sitting with their staff. It is denied that the office of the Commissioner is different from the administrative wing.

8. The Appellate Court has considered the submissions made by the Appellants. The Appellate Court has noted that it is the case of the Appellants that the demolition work had already commenced in the office of the Respondent No.1-Commissioner.

9. The basic contention raised by the Petitioners as regards the work commenced in the office of the Commissioner is that the office of the Commissioner does not form part of the administrative wing of the Corporation. The reply to the said contention is that the Commissioner is also part of the administration being the head of the administration. It is necessary at this stage to refer to the relevant resolutions which are on record. The office noting prepared on 7th August 2004 which was placed before the new Committee refers to the renovation of the sitting arrangement of the administrative wing on the 4th floor. A resolution was accordingly passed by the law committee on 17th August 004 and Resolution of the Standing Committee accepting the tender of the Respondent No.4 was passed on 28th December 2004. It is not in dispute that the office of the commissioner is situated on the 4th floor.

10. Whether the office of the Commissioner forms part of the administrative wing on the 4th floor of the building or not is a matter which will have to be decided on the evidence at the time of hearing of the suit. At the stage of hearing of the interim application only primafacie consideration of the material on record is required to be made. As the Commissioner is the administrative head of the Corporation and his office is situated on the 4th floor, prima-facie it appears that the office of the Commissioner may be a part of the administrative wing. That is the reason why interference is made by the Appellate Court with the order of temporary injunction granted by the trial Court. It is well settled that the grant of temporary injunction is always discretionary. When the main suit is pending in which the evidence will be led on all the aspects, the question is whether the interim order is required to be made in this Petition under Article 227 of the Constitution of India.

11. After having heard the party-in-person and the learned Counsel appearing for the parties and after perusing the documents on record, it appears that the work of renovation is already started in the office of the Municipal Commissioner. If after leading the evidence at the time of hearing of the suit, the Petitioners succeed in establishing that the office of the Commissioner is not a part administrative wing, the

trial Court can always pass decree by moulding the reliefs which are prayed for in the plaint so as to prevent loss of public money. The Petitioner can also amend the plaint and pray for suitable reliefs. On the other hand if the work which is already commenced is to be stopped and if ultimately the Petitioners fail in the suit, there will be escalation in the price and therefore, cost of carrying out the work in the office of the Commissioner may increase which may ultimately amount to wasting public money. In some other case the Court could have called upon the Plaintiffs to furnish security as a condition for grant of temporary injunction to ensure that no loss is caused in case the Plaintiffs fail in the suit. But I am dealing with the case of the Petitioners/ Plaintiffs who are trying to espouse a public cause and it is not expected that such persons should be called upon to furnish any security. The work has already commenced in the office of the Commissioner. Considering the tentative finding which I have recorded in paragraph No.10 I find that no case is made out for interference with the order impugned.

12. It is made clear that the work which is being carried on the basis of the impugned resolution is entirely subject to the final result and outcome of the suit and it is for the trial Court to pass appropriate decree after considering the evidence which may be led by the parties.

13. Hence the writ petition is rejected with no order as to costs. It is made clear that all contentions of the parties are expressly kept open and as stated earlier, the work which is in progress is subject to the final outcome of the suit. Liberty to the Petitioner to apply for impleading the Respondent No.4 as a party to the suit.

14. The hearing of the suit is expedited and the learned trial Judge is directed to hear and dispose of the suit as expeditiously as possible and in any event on or before 31st March 2006. It is made clear that I have not finally adjudicated upon any of the contentions raised in the petition or in the affidavits which are on record.

Judge.